

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5988 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

nt? No

nt? No

nt? No

nt? No

nt? No

nt? No

nt? No

nt? No

nt? No

nt? No

nt? No

J

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?Yes

5. Whether it is to be circulated to the Civil
Judge?No

SALIMBHAI HASANBHAI SALEJI

Versus

STATE OF GUJARAT

Appearance:

MR.K.J.SHETHNA FOR MR ADIL MEHTA for Petitioner

MR.NEEGAM SHUKLA,AGP for Respondent No. 1, 3, 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 11.7.1996 passed by the District Magistrate, Valsad detaining the petitioner under the provisions of Blackmarketing and Maintenance of Supplies of Essential Commodities Act,1980. The detention order was executed on 11.7.1996 itself and since then the petitioner is under detention lodged at Bhuj Special Jail, Bhuj.

The present Special Civil Application was filed in this Court on 12.8.1996 and on 13.8.1996 Rule returnable for 10th September, 1996 was issued and an affidavit-in-reply has been filed by the Detaining Authority i.e. District Magistrate, Valsad and an affidavit-in-reply has also been filed by Shri K.S.Vaghela, Under Secretary to the Government of Gujarat, Food and Civil Supplies Department, Gandhinagar. Besides this a counter affidavit dated 6.9.1996 has also been filed on behalf of the Union of India.

The grounds enclosed with the detention order show that the petitioner was found to be involved in the blackmarketing activity of the illegal procurement of filled Cylinders of essential commodity Liquefied Petroleum Gas which is meant for distribution to authorised consumers under the public distribution system. The District Supply Officer, Valsad, Mamlatdar, Navsari, and Chief Supply Inspector, Valsad had detected on 2.7.1996 at 11.30 p.m. That ahead of Iddisbhai Isabaji Diler Farm House at Vesma, Taluka Navsari, a Truck No.K.A.-01-6033 and Truck No.MWU-2530 the cooking gas was being transferred from the duly filled Cyliners to the empty Cylinders. During the course of investigation of this case, it was found that the petitioner was directly involved at his Garage. Fifteen Cyliners were filled in from the Cyliners which were there in Truck No.KA-01-6033 and nine Cyliners were filled in from the Cylinders which were there in Truck MWV-2530. It was found that the petitioner was engaged in this business of blackmarketing for last about one year and eleven months. It also came on the record that

the petitioner was selling Cyliners so filled at the rate of Rs.125/- per Cyliner at his garage which is known as Salim's Garage near Salim Auto Consultant at National Highway No.8. The Cyliners duly filled and the Cyliners which were sought to be filled were stocked in Salim's garage in village Vesma. The Detaining Authority has taken into consideration the material available before it and on that basis passed the impugned detention order u/s.3(2) of the prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980. The argument of the learned counsel for the petitioner is that the claim of privilege in the facts of this case is not genuine because there was no basis to withhold the identity of witnesses from the petitioner at the time of supplying the documents with the grounds because none of these witnesses have expressed any fear of their security in their statements. Even otherwise the statements show that the witnesses have only stated that their statements may be kept secret. They wanted it to be kept secret and what consequences were to flow against them in case of the deisclosure of their names has not been stated and none of the witnesses have said that they had any danger from the petitioner. The learned counsel for the petitioner has argued that in absence of the disclosure of the names of these witnesses, the right of making effective representation under Article 22(5) of the Constitution of India has been violated.

The detention order shows that the Detaining Authority has taken into consideration that because of the petitioner's unauthorised and blackmarketing activities witnesses were not prepared to report against them and certain witnesses had deposed that their identity be kept secret and only on this understanding, faith and belief they had made the statements and therefore priviledge had been claimed under section 8(2) of the aforesaid Act of 1980 and it was made out from these statements that the petitioner was doing the business of selliing out cooking gas cylinders and regulators at the rate of Rs.4500/- at Salim's garage and the Cyliners were being sold out for a sum of Rs.125/- to Rs.175/-.

The learned Addl. Government Pleader has submitted that the identity of the witnesses have been withheld in public interest and that the same is permissible u/s. 8(2) of the Act as also under Article 22(6) of the Constitution of India and as such the petitioner's grievance of violation of right to make effective representation under Article 2(5) of the

Constitution of India is wholly misconceived.

I have considered the submissions made on behalf of both the sides. Section 8 of prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 is reproduced as under :

" Grounds of order of detention to be disclosed to person affected by the order :-

- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.
- (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

Mr.Shethna has placed strong reliance on Division Bench decision of this Court reported in 1981 GLR Pg.1186 [Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others] which was a case under National Securities Act. and 1994(1) GLR Pg.761 [Chandrakant Patel Vs. State] the Full Bench decision of this Court. The Division Bench while considering the question of privilege of non-disclosure has considered that detenu is to be informed not merely of the factual inference and factual material which led to such inferences but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the Detaining Authority in the course of his representation to the fact whether the factual material collected from such sources could be relied upon and used against the detenu on the facts and in the circumstances of the case. The private promise of confidentiality must yield to the general public interest that is served by communication of such particulars and materials to the detenu in order to enable him to make an effective representation. It has been further held that the Court must at least be satisfied that the authority had applied its mind and has come to the conclusion with regard to the public interest bona fide and not arbitrarily or capriciously. This Division Bench judgment i.e. Bai Amina's case (Supra) was considered in Chandrakant's case (Supra) by Full Bench of this Court.

In a reference as to' whether the judgment of Bai Amina Vs. State of Gujarat was not good law as inconsistent with the decision of the Bombay High Court in the case of Balkrishna Kashinath Vs. The District Magistrate, Thane 1956(58) BLR Pg.614 and whether the ratio of the decision Bai Amina's Case does not lay down a good law'. Full Bench held that two decisions cannot be said to be in conflict with each other, there is no inconsistency in the ratio of the Division Bench decision in the case of Balkrishna (Supra) and the ratio of the decision of the Division Bench in the case of Bai Amina Vs. State of Gujarat and that Bai Amina's case lays down good law.

The facts of the present case make it clear that the statements of three witnesses which have been supplied to the petitioner along with the grounds i.e. at page nos. 40-42, 43-46 and 47-49 make it clear that the witnesses do not give any reasons as to why their statements were to be kept confidential. The Detaining Authority while referring to these witnesses have also not considered as to what for their identity was to be kept secret. Except mentioning the word 'public interest' nothing has been shown as to why the identity of these witnesses was to be kept confidential for reasons of public interest. The promises by the Detaining Authority or the condition on which the statements were made by the witnesses that statements must be kept secret cannot be said to be a ground to withhold their identity for public interest. Mr.Nigam Shukla, learned AGP submitted that according to the decision of the Constitution Bench reported in 1956 SC Pg.31 Lawrence D'Souza Vs. State of Bombay, the facts which cannot be required to be disclosed are those which such authority considers to be against public interest There cannot be any quarrel with the proposition of the law laid down in Lawrence D'Souza Vs. State of Bombay (Supra) the case with regard to the ambit and scope of Article 22(6) of the Constitution of India and in fact the Division Bench of this Court in Bai Amina's case has also considered the aforesaid decision of the Constitution Bench of the Supreme Court. In the facts of the present case only the reason for withholding such information is that it was considered to be against the public interest to reveal identity. He was given promise that his statement will be kept secret. Now such assurance by any official or condition of secrecy put by witness cannot be said to be germane on the question of public interest unless it is coupled with some factual basis or a rationale behind it. No doubt section 8(2) uses the word 'public interest' and privilege can be

exercised by the Detaining Authority for the reasons of public interest but in any case public interest is not an unruly horse so as to consider it within its ambit and scope. anything or everything which has no nexus with the public interest. If a witness claims his identity to be kept secret on the ground that his life is in danger in case his identity is disclosed or a person against whom he is making statement is dangerous or headstrong person or that the disclosure of his identity may be injurious to the national interest or may be prejudicial to the security of the nation, such considerations may establish the nexus with the public interest. But in absence of such nexus, it cannot be said that it is a case of the valid and genuine exercise of the privilege u/s.8(2). I therefore find that in the facts of the present case, looking to the reasons given for exercise of privilege u/s 8(2) in the detention order and the statements of three witnesses whose identity has not been disclosed, it cannot be said that it is a genuine case of claiming privilege u/s.8(2) of the Act. Obviously non-disclosure of the particulars of these three witnesses has adversely affected the petitioner's right of making effective representation under Article 22(5) of the Constitution of India and the impugned detention order deserves to be quashed and set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 11.7.1996 passed by the District Magistrate, Valsad is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.
